

2.1.xiii Procedure**ACQUISITION AND DISPOSAL OF LAND HELD BY
TRUST COUNCIL**

Trust Council: December 8, 2006

A. PURPOSE:

To define policies and procedures that will ensure a transparent, fair and equitable process for Trust Council when considering the acquisition of land or the disposition of land held by Trust Council.

B. REFERENCES:

1. *Local Government Act* Section 186 (1)(2)
2. *Community Charter* Section 188(2)(e)
3. *Islands Trust Act* Section 8 (2) (a) and 8 (3)

C. POLICIES AND PROCEDURES:**1. General**

- 1.1 Trust Council will ensure a transparent, fair and equitable process when acquiring or disposing of land.
- 1.2 Trust Council will make decisions to acquire or dispose of land on the basis of a staff report to Trust Council that outlines the particulars of the land, the reasons for acquisition or disposal, consideration of any recommendations made by the relevant local trust committee or island municipality, the anticipated community benefits, the encumbrance or release of encumbrance to the Trust Council, financial details of the transaction, historical factors leading to interest in the land and any other information deemed necessary to assist a decision by Trust Council.

2. Acquisition of Land

- 2.1 For land acquired by Trust Council, financial encumbrances must be discharged before or concurrently with the transfer. Trust Council will be provided a reasonable amount of time to undertake due diligence investigations with respect to the land before accepting transfer.

3. Disposal of Land

- 3.1 When disposing of land, Trust Council will ensure
 - Legislated requirements for land disposition are met
 - Primary benefits accrue to the community where the land is located.
 - The decision is based on an objective evaluation of available options.
 - The local trust committee's history of involvement with the land included community consultation.
- 3.2 Trust Council will ensure a proposal process with sufficient notification to allow interested groups the opportunity to express interest. Trust Council will proceed using a less formal request for proposal process, not creating contractual obligations between the Trust Council and proponents, until the execution of a contract for purchase and sale of the land. In this respect, irrevocable bids or bid deposits will not be required. Depending upon the circumstances of the disposition, Trust Council may consider factors other than price when making a decision about a proponent in land disposals. The other factors may include past experience, financial viability, and proven capacity of the proponent. Preference will be given to non profit organizations unless the sale results in higher community benefits or greater prospect that objectives for the property will be met.
- 3.3 Trust Council will not complete final disposition of land unless the subject land is appropriately zoned for the intended use or, if the use is not known at the time Trust Council requests proposals, a condition precedent may be included in the purchase and sale agreement regarding rezoning.
- 3.4 Proposals should state the intended use of the property and the timeframe for developing the land.
- 3.5 The purchase and sale agreement with a preferred proponent may address such matters as performance, timelines, defaults and other matters deemed important to Trust Council.
- 3.6 In some cases, Trust Council may require some kind of reversionary interest in the land to be disposed. For instance, land could be transferred only for so long as it is used for a particular purpose or Trust Council may require an option whereby it could re-acquire the land if certain conditions are not achieved within specified timelines. Trust Council may also require that a covenant be registered on title restricting the development of the land.
- 3.7 Trust Council should consider whether any agreement it enters into includes liabilities on its part, as these may require Ministerial approval as per Section 8(3) of the *Islands Trust Act*.

Appendix A

Relevant Excerpts from the Local Government Act

Division 5 — Disposing of Land and Improvements

Disposition of land and improvements

- 186** (1) If a board intends to dispose of land or improvements, it must make the land or improvements available to the public for acquisition.
- (2) Subsection (1) does not apply if the disposition is
- (a) to a not for profit corporation,
 - (b) to a public authority,
 - (c) to a person who, as part of the consideration for the disposition, will exchange land or an improvement with the regional district,
 - (d) to a person under a partnering agreement that has been the subject of a process involving the solicitation of competitive proposals, or
 - (e) a disposition of land to an owner of adjoining land for the purpose of consolidating the lands.

Notice of proposed disposition

- 187** (1) A board intending to dispose of land or improvements must publish notice of its intention in a newspaper in accordance with subsection (2) or (3), as applicable.
- (2) If the disposition is a disposition referred to in section 186 (2), the notice must include
- (a) a description of the land or improvements,
 - (a.1) the person or public authority who is to acquire the property under the proposed disposition,
 - (b) the nature and, if applicable, the term of the proposed disposition, and
 - (c) the consideration to be received by the regional district for the disposition.

- (3) For all other dispositions, the notice must include
- (a) a description of the land or improvements,
 - (b) the nature and, if applicable, the term of the proposed disposition, and
 - (c) the process by which the land or improvements may be acquired.

Use of money from sale of land or improvements

- 188** (1) Subject to subsections (2) and (3), all money received by a regional district from the sale of land or improvements must be placed to the credit of a reserve fund.
- (2) If, after money is received under subsection (1), a debt incurred by the regional district for the purchase or management of the land or improvements remains, there must be set aside all or part of the proceeds of the disposition, as required to repay the debt as it matures together with interest.
- (3) Except as required by subsection (2), in the case of a sale of park land, a regional park or a regional trail, the proceeds of the disposition must be placed to the credit of a reserve fund established for the purpose of acquiring park lands.

Appendix B

Relevant Excerpts from the Community Charter

Establishment of reserve funds

188 (1) A council may, by bylaw, establish a reserve fund for a specified purpose and direct that money be placed to the credit of the reserve fund.

(2) If a municipality receives money in respect of any one of the following, the council must establish a reserve fund for the applicable purpose:

(a) money received from the imposition of a development cost charge, which must be placed to the credit of a reserve fund in accordance with section 935 [*use of development cost charges*] of the *Local Government Act*;

(b) money received

(i) from the sale of park land,

(ii) under section 27 (2) (b) [*disposal of park land*], or

(iii) under section 941 (12) [*provision of park land on subdivision*] of the *Local Government Act*,

(c) money received under section 41 (1) (d) [*disposal of highway property that provides access to water*], which must be placed to the credit of a reserve fund in accordance with that section;

(d) money received under section 906 (3) [*parking space requirements*] of the *Local Government Act*, which must be placed to the credit of a reserve fund for the purpose of providing off-street parking spaces;

(e) except for tax sale proceeds, money received from the sale of land and improvements, which must be placed to the credit of a reserve fund for the purposes of paying any debt remaining in relation to the property and of acquiring land, improvements and other assets of a capital nature.

Use of money in reserve funds

189 (1) Subject to this section, money in a reserve fund, and interest earned on it, must be used only for the purpose for which the fund was established.

(2) If the amount to the credit of a reserve fund is greater than required for the purpose for which the fund was established, the council may, by bylaw, transfer all or part of the amount to another reserve fund.

(3) If the current municipal revenue is not sufficient for the amount required to pay compensation in respect of property expropriated or injured or to carry out works referred to in section 32 (3) [*entry on land to mitigate damage*], the council may, by bylaw, use money from a reserve fund to the extent required.

(4) As a restriction on subsection (2), a transfer from a reserve fund established for a capital purpose may only be made to another reserve fund established for a capital purpose.

(4.1) Despite any other enactment, if

(a) money in a reserve fund established for a capital purpose, including a reserve fund under section 935 of the *Local Government Act* established for a capital purpose, is not currently required for that purpose, and

(b) the municipality has another reserve fund established for a capital purpose,

the municipality may use money in the first reserve fund for the purposes of the second reserve fund.

(4.2) If money from one reserve fund is used under subsection (4.1) for the purposes of another reserve fund, the municipality must repay to the first reserve fund, no later than the time when the money is needed for the purposes of that reserve fund,

(a) the amount used, and

(b) an amount equivalent to the interest that would have been earned on the amount used had it remained in the first reserve fund.

(5) As a restriction on subsections (2) and (3), a council may not transfer amounts or use money from a fund required under section 188 (2) (a) [*development cost charge reserve fund*] or (b) [*park land acquisition reserve fund*] unless the bylaw is approved by the minister.